

Spatial Ventures Sdn Bhd v Twintech Holdings Sdn Bhd

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HIGH COURT (KUALA LUMPUR) — SUIT NO 22NCC-493-04 OF
2012

NALLINI PATHMANATHAN J

30 AUGUST 2013

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Contract — Quantum meruit — Nature of quantum meruit — Claim on quantum meruit basis for work done — Project management agreement — Failure of plaintiff to prove damages suffered or restitution it was entitled to for work done — Whether plaintiff could recover damages on quantum meruit basis by reference to scale in contract or contract price

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Restitution — Quantum meruit — Work done — Project management agreement — Failure of plaintiff to prove damages suffered or restitution it was entitled to for work done — Whether plaintiff could recover damages on quantum meruit basis by reference to scale in contract or contract price

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Pursuant to two letters of engagement relating to two separate pieces of land proposed to be developed, the plaintiff was appointed by the defendant as the lead management consultant responsible for the project management works as well as co-ordinating the services of the other consultants within the consortium. To this end the consortium consultants included the defendant, the architect (Spatial Design), civil and structural engineer (Jasamurni Konsult), mechanical and electrical engineer (Leecon Perunding) and quantity surveyor (Perunding Kos CSS). It was a term of both these letters of engagement that the total professional fee chargeable by the consortium as a whole would be 6% of the total construction cost and that all payments would be made to Spatial Venture Sdn Bhd. The plaintiff and the other consultants commenced work on the said project but subsequently the works were abandoned. The plaintiff claimed on quantum meruit basis for work done, not only by itself but also all other consortium members in the sum of RM498,123 for work done on the first piece of land and RM1,023,361 for the second piece of land. Whilst conceding liability, the defendant claimed that it was unaware at all material times of the details of the work done by the plaintiff and the other consortium members. The defendant disputed the plaintiff's claim on the grounds that the plaintiff failed to prove work done up to the value claimed. This was an appeal by the defendant against the decision of the deputy registrar who assessed damages on the plaintiff's claim in the sum of RM25,300,000.

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Held:

- (1) An assessment for restitution on the basis of quantum meruit is in reality

- A a measure of the costs of the work done, a matter which does not depend upon the contract and therefore will not be trammelled or limited by the contract rate. This gives the plaintiff, not contractual damages, but restitution for the work done. Hence, the plaintiff could not seek to recover damages on quantum meruit basis by reference to the scale in the contract or on the contract price. Thus, the plaintiff's claim premised on the scale costs in the letters of engagement was not a tenable basis on which to assess or award damages and accordingly this basis, in accordance with the law, was rejected (see paras 24–25).
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- C (2) In relation to assessment on a quantum meruit basis, the court has to consider the following issues in assessing work done: (i) what as a matter of fact is the work done; and (ii) how is the work done to be measured (see para 26).
- D (3) At the hearing of the assessment of damages before the learned registrar, the evidence was entirely by way of affidavit evidence. The defendant had put the plaintiff to proof of all the documents set out above, stating that it required formal proof. Notwithstanding this, no witnesses were called. The net result was that all the documents remained in dispute in relation to the veracity or truth of the contents. Therefore, there was no basis on which to assess or ascertain the value to be accorded to the invoices or schematic drawings. Hence, the plaintiff failed to prove the damages it suffered, or the restitution it was entitled to for work done on a quantum meruit basis (see paras 29–30 & 35).
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- F (4) The various invoices and schematic drawings were addressed to the architect, namely Spatial Design, and not the plaintiff. Similarly, the schematic drawings were all done by Spatial Design and Jasamurni Konsult. However the claim here was made by an entirely separate entity, namely the plaintiff. There was nothing to link the work done with the plaintiff. Furthermore, while the plaintiff did not exist before 8 April 2008, it had billed for services carried out prior to that date (see paras 36–37).
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- H (5) The plaintiff had failed on a balance of probabilities to establish that it was entitled to restitution on a quantum meruit basis in the sum of RM1,521,484. As such the court had no option but to award nominal damages in the sum of RM2,500 (see para 38).

[Bahasa Malaysia summary]

- I Menurut dua surat pelantikan berkaitan dengan dua bidang tanah berasingan yang dicadangkan untuk dibangunkan, plaintif telah dilantik oleh defendan sebagai perunding pengurusan utama yang bertanggungjawab untuk pengurusan projek kerja-kerja dan juga menyelaraskan perkhidmatan perunding lain dalam konsortium. Untuk tujuan ini perunding konsortium termasuk defendan, arkitek (Rekabentuk Spatial), jurutera awam dan struktur

(Jasamurni Konsult), jurutera mekanikal dan elektrik (Leecon Supplier Directory) dan ukur bahan (Supplier Directory Kos CSS) dilantik. Ia adalah satu terma bagi kedua-dua surat ikatan yang jumlah bayaran yang boleh dikenakan cukai profesional oleh konsortium itu secara keseluruhannya adalah 6% daripada jumlah kos pembinaan dan bahawa semua pembayaran akan dibuat kepada Spatial Venture Sdn Bhd. Plaintiff dan perunding lain memulakan kerja ke atas projek tersebut tetapi kemudiannya kerja-kerja telah ditinggalkan. Plaintiff mendakwa secara quantum meruit bagi kerja yang disiapkan, bukan sahaja dengan sendirinya tetapi juga semua ahli konsortium yang lain dalam jumlah wang sebanyak RM498,123 untuk kerja-kerja yang dilakukan ke atas sebidang tanah pertama dan RM1,023.361 untuk sebidang tanah kedua. Walaupun mengakui liabiliti, defendan mendakwa bahawa ia tidak tahu pada setiap masa material mengenai perincian kerja yang dilakukan oleh plaintiff dan ahli-ahli konsortium yang lain. Defendan mempertikaikan tuntutan plaintiff atas alasan bahawa plaintiff gagal membuktikan kerja yang dilakukan bersamaan dengan nilai yang dituntut. Ini adalah satu rayuan oleh defendan terhadap keputusan timbalan pendaftar yang menilai ganti rugi pada tuntutan plaintiff dengan jumlah wang sebanyak RM25,300,000.

Diputuskan:

- (1) Penilaian untuk pengembalian atas dasar quantum meruit sebenarnya adalah ukuran kos kerja yang dilakukan, satu perkara yang tidak bergantung kepada kontrak dan oleh itu tidak akan menghalang atau dihadkan oleh kadar kontrak. Hal ini memberikan plaintiff, bukan ganti rugi kontraktual, tetapi pengembalian untuk kerja-kerja yang dilakukan. Oleh itu, plaintiff tidak boleh mendapatkan ganti rugi secara quantum meruit dengan merujuk kepada skala dalam kontrak atau pada harga kontrak. Oleh itu, tuntutan plaintiff berdasarkan kos skala dalam surat pelantikan bukanlah dasar yang dapat dipertahankan di mana untuk menilai atau award ganti rugi dan sewajarnya dasar ini, menurut undang-undang, telah ditolak (lihat perenggan 24–25).
- (2) Berhubung dengan taksiran berasaskan quantum meruit, mahkamah perlu mengambil kira isu-isu berikut dalam menilai kerja yang dilakukan: (i) apakah yang dikatakan sebagai kerja yang dilakukan, dan (ii) bagaimanakah kerja yang dilakukan akan diukur (lihat perenggan 26).
- (3) Ketika pendengaran penaksiran ganti rugi sebelum pendaftar yang bijaksana, keterangan adalah sepenuhnya melalui keterangan affidavit. Defendan telah meletakkan plaintiff untuk membuktikan semua dokumen yang dinyatakan di atas, yang menyatakan bahawa ia memerlukan bukti rasmi. Meskipun demikian, tiada saksi dipanggil. Keputusan akhirnya adalah bahawa semua dokumen kekal dalam pertikaian berhubung dengan kesahihan atau kebenaran kandungan.

- A Oleh itu, tidak ada asas untuk menilai atau menentukan nilai yang akan diberikan kepada invoice atau lukisan skematik. Oleh itu, plaintif gagal membuktikan kerosakan yang dialaminya, atau ia berhak kepada pengembalian untuk kerja-kerja dilakukan secara quantum meruit (lihat perenggan 29–30 & 35).
- B (4) Pelbagai invoice dan lukisan skematik telah dialamatkan kepada arkitek, iaitu Design Spatial, dan bukan plaintif. Begitu juga dengan lukisan skematik semuanya dibuat oleh Design Spatial dan Jasamurni Konsult. Walau bagaimanapun tuntutan di sini telah dibuat oleh entiti yang berasingan sepenuhnya, iaitu plaintif. Tiada apa-apa untuk
- C menghubungkan kerja yang dilakukan dengan plaintif. Tambahan lagi, walaupun plaintif tidak wujud sebelum 8 April 2008, ia telah menerima bil bagi perkhidmatan yang dijalankan sebelum tarikh tersebut (lihat perenggan 36–37).
- D (5) Plaintif telah gagal atas imbalan kebarangkalian untuk membuktikan bahawa ia berhak untuk pengembalian secara quantum meruit untuk jumlah wang sebanyak RM1,521,484. Oleh itu mahkamah tidak mempunyai pilihan tetapi untuk memberikan award ganti rugi nominal dengan jumlah wang sebanyak RM2,500 (lihat perenggan 38).]

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Notes

For cases on nature of quantum meruit, see 3(3) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 5894–5896.

For cases on work done, see 10 *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2297–2299.

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Cases referred to

Lee Sau Kong v Leow Cheng Chiang [1961] 1 MLJ 17, CA (refd)

Lodder v Slowey [1904] AC 442, PC (refd)

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Bonham-Carter v Hyde Park Hotel Ltd [1948] WN 89, KBD (refd)

Legislation referred to

Contracts Act 1950 s 74

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Swinder Singh (Raslan & Loong) for the plaintiff.

Wan Muhammad Amin Wan Yahya (Jowe Almeida with him) (Amin Karlos) for the defendant.

Nallini Pathmanathan J:

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INTRODUCTION

[1] This is an appeal by the defendant against the decision of the deputy registrar dated 15 April 2013, assessing damages on the plaintiff's claim in the

total sum of RM25,300,000 (RM25.3m) together with costs of RM8,000. The assessment of damages was conducted pursuant to a consent judgment entered between the parties on 29 December 2012 ('the consent judgment') the terms of which are as follows: **A**

- (a) the defendant concedes to the plaintiff's claim only in liability with the quantum of damages to be assessed by the deputy registrar; **B**
- (b) the defendant is required to pay damages to the plaintiff which will be assessed by the deputy registrar; and
- (c) no order as to costs. **C**

THE SALIENT FACTS

[2] Pursuant to two letters of engagement dated 16 February 2008 and 16 February 2009 respectively, relating to two separate pieces of land proposed to be developed, the plaintiff was appointed by the defendant as the lead management consultant responsible for the project management works as well as co-ordinating the services of the other consultants within the consortium. To this end the consortium consultants included the defendant, the architect namely one Spatial Design, the civil and structural engineer, one Jasamurni Konsult, the mechanical and electrical engineer, one Leecon Perunding and the quantity surveyor, one Perunding Kos CSS. **D**
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[3] It was a term of both these letters of engagement that the total professional fee chargeable by the consortium as a whole would be 6% of the total construction cost. **F**

[4] It was a further term that all payments would be made to Spatial Venture Sdn Bhd. **G**

[5] The letters of engagement then go on to set out the individual scope of work of each of the consultants, namely the work to be done which may be summarised briefly as follows: **H**

- (a) project management was to be conducted by the plaintiff whose primary function was to co-ordinate the various consultants; **I**
- (b) architectural work was to be carried out by Spatial Design Sdn Bhd;
- (c) civil and structural work was to be carried out by Jasamurni Konsult;
- (d) mechanical and electrical engineering work to be carried out by Leecon Perunding; and
- (e) quantity surveying by Perunding Kos CSS.

A [6] Under cl 5 of the letters of engagement there was provision for termination as well as the postponement or abandonment of the project. In the instant case the projects on both pieces of land were abandoned. Accordingly cl 5.15 provides that the consultants are to be paid for all services performed prior to receipt of the notification of abandonment.

B [7] According to cl 5.16, entitled 'Stage Completion & Progress payment of the project' it was agreed between the plaintiff and the defendant that progress payment for the project would be made in accordance with the table set out in the said clause namely:

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Stage of completion & Progress payment of the project

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Phase	Percentage for Each Stage	Cumulative %
a) Schematic Design Phase	15%	15%
b) Design Development Phase	30%	45%
c) Contract Documentation Phase	25%	70%
d) Contract Implementation	30%	100%

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[8] The plaintiff and the other consultants commenced work or services on the said project in or around March 2009. Pursuant to this, approval was obtained from the Majlis Perbandaran Kajang in March and December 2008 respectively for each piece of land. Approvals were procured from the Fire and Rescue Department similarly in April and June 2009.

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[9] Thereafter the defendant appointed a contractor, namely one Pembinaan Purcon Sdn Bhd to commence work on the project on both pieces of land on 2 February 2009. This entire matter was brought to litigation because the defendant contends that it was unaware that the previous director and Chief Executive Officer, the late Professor Datuk Ismail had contracted with the plaintiff to this effect. This however was the subject matter of the trial where liability was conceded. This is relevant here because the defendant maintains that it was unaware at all material times of the details of the work done by the plaintiff and the other consortium members.

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[10] On 26 March 2011 the plaintiff wrote to a third party advising that the contractor had abandoned works. As such no further work was carried out in respect of the project on both pieces of land.

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[11] Pursuant to the consent judgment the plaintiff makes claim for work done, not only by itself but also all other consortium members. The plaintiff makes claim for a sum of RM498,123 for work done on the first piece of land,

ie Lot No 41503 and a sum of RM1,023,361 for the second piece of land, namely Lot 41514. The defendant refutes and rejects this claim maintaining that the plaintiff has failed to prove work done up to this value.

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[12] It is relevant for the purposes of this assessment of damages claim that it was agreed between the parties that damages would be assessed on a quantum meruit basis.

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[13] The plaintiff has submitted, inter alia, as follows in relation to its claim:

... Similarly on the facts of our case the plaintiff's claim is in relation to work done based on the contract and invoices issued are based on the progress payments upon the completion of the various stages, namely the Schematic Design phase and part of the Design Development Phase. It is submitted that the plaintiff's claim is a claim for quantum meruit for work done.

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[14] It is therefore not in dispute that damages are to be assessed on this basis.

[15] I am in agreement with learned counsel for the defendant that it is incumbent upon the plaintiff to prove:

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- (a) the quantum or amount of work done in accordance with the letters of engagement; and
- (b) the value of such work done

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THE PLAINTIFF'S CLAIM

[16] The plaintiff's claim is premised on the formula in the letters of engagement. Essentially for each piece of land, the plaintiff relies on a clause in the letters which provides that the agreed professional fee for the construction is 6%. As the total construction costs for the first piece of land is RM27,673,493.61 and as, according to the plaintiff, 30% of the project was effectively completed, the plaintiff has computed its claim for work done on the first piece of land as follows:

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Lot 41503 project

Total Professional Fee Payable = 6% x RM27,673,493.61 (total construction cost)
= RM1,660,409.58.

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The plaintiff then takes 30% x RM1,660,409.58 to obtain a figure of RM498,122.88.

Similarly for the second piece of land, the total construction cost is

A RM56,853,352.01 and as, according to the plaintiff, 30% was completed, the plaintiff has utilised the full 6% of the total construction costs and then taken 30% from the said figure. In other words the plaintiff has computed its claim for work done as follows:

B *Lot 41514 project*

Total Professional Fee Payable = 6% x RM56,853,352.01 (total construction cost)
= RM3,411,201.12

C The plaintiff then takes 30% of RM3,411,201.12 to obtain a figure of RM1,023,360.34.

[17] As proof of its entitlement to the said sums the plaintiff relies on the following documents:

- D (a) A total of eight invoices issued by the other consortium consultants all addressed to the architect, Spatial Design;
- (b) A series of schematic design drawings by Spatial Design and Jasamurni Konsult for both Lots for purposes of the application for planning permission/planning approval, which approval was subsequently granted by the Kajang City Council.
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THE DEFENDANT'S POSITION

F [18] The defendant contends in response to the plaintiff's claim that the percentage of 6% is not applicable for, inter alia, the following reasons:

- (a) The formula is only applicable if construction is completed; and
- G (b) The formula as set out in the letters of engagement envisages that the said 6% is for all the consultants and not just the plaintiff.

[19] The words used in the letters of engagement are 'The total professional fee chargeable by the above consortium' which means, it is submitted, that the 6% professional fee is available for division between all the consortium members. However the defendant points to the fact that the plaintiff in this action is only the project manager and not the consortium members as a whole. Neither has the plaintiff premised its action as an agent for the consortium. Instead the plaintiff individually seeks to recover the entire 6%, notwithstanding that the said percentage is for all five members of the consortium.

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[20] Accordingly the defendant contends that the sums above sought by the plaintiff ought to be divided in five in order to reflect accurately the amount

due and owing to the plaintiff as a single member of the consortium and on the assumption that the 6% is to be divided equally. Therefore the defendant contends that the plaintiff's claim should be considerably less than RM498,122.88 and RM1,023,360.34. The defendant submits that these sums should be divisible by five so as to give at best, the plaintiff a right to the sum of RM99,624.60 and RM204,672.20 respectively. This would give rise to a total of RM304,296.80. However the defendant also points out that as the percentage due to each member of the consortium is not clear it is not possible to assess with any degree of accuracy the amount payable to the plaintiff.

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[21] The plaintiff meets this contention by relying on the clause in the letters of engagement which provide that all payments are to be made to the plaintiff. In other words the plaintiff relies on this clause to claim entitlement to the 30% of the 6% total professional fees.

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[22] However the plaintiff's claim is not pleaded on the basis that it makes claim on behalf of all the consortium members. It appears to be a claim by the plaintiff individually. Neither is there disclosure of the percentage payable to each consortium member. The pleadings do not to that extent reflect the nature of the claim fully.

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[23] Secondly the defendant maintains that the application of a formula in determining the quantum payable to the plaintiff is not an assessment on the basis of quantum meruit. The use of a formula, it is submitted, contravenes the basic principle of quantum meruit which requires whatever work to be done to be quantified and a value then placed on it to determine the quantum.

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THE LAW ON QUANTUM MERUIT

[24] The position in law is that an assessment for restitution on the basis of quantum meruit is in reality a measure of the costs of the work done, a matter which does not depend upon the contract and therefore will not be trammelled or limited by the contract rate. This gives the plaintiff, not contractual damages, but restitution for the work done. In *Lodder v Slowey* [1904] AC 442, the contract was to construct a tunnel and other works on certain land, and the builder was prevented from completing. The judge at first instance held that the measure of damages was the amount which the plaintiff builder had lost by exclusion from the works before their completion and not the value of the work done by the plaintiff whether at the market price or at the contract price. This was reversed on appeal the proper measure held to be the actual value of the work and materials, the issue of profit or loss upon completion being immaterial, (see *MacGregor on Damages* at para 1155).

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[25] It follows from the foregoing that the plaintiff cannot seek to recover

A damages on quantum meruit basis by reference to the scale in the contract or on the contract price. Therefore the plaintiff's claim premised on the scale costs in the letters of engagement is not a tenable basis on which to assess or award damages and accordingly the said basis, in accordance with the law, is rejected.

B THE ASSESSMENT ON A QUANTUM MERUIT BASIS

[26] It follows from the foregoing that the court has to consider the following issues in assessing work done:

- C** (a) What as a matter of fact is the work done?
(b) How is the work done to be measured?

D *Issue (a): What as a matter of fact is the work done?*

[27] It is not in dispute that the work done comprises the schematic drawings as well as the work done to procure planning permission from the Kajang Municipal Council and Fire and Rescue Department. (What is in issue however is that the work was done by entities other than the plaintiff).

Issue (b): How is the work done to be measured?

F [28] The plaintiff has sought to prove the quantum claimed for work done by producing the following invoices, reports, letters and certificates:

- (a) the soil investigation for construction work on Lot 41514 done by Global Geotechnics Sdn Bhd for Spatial Design;
- G** (b) building survey conducted by Juruukur Perpaduan Sdn Bhd for Lot 41502, 51503 and part of Lot 41507 upon request by Spatial Design;
- (c) plan No LA-01 for Lot 41514 approved by the Indah Water for the purposes of planning approval for sewerage;
- H** (d) the planning permission dated 26 March 2008 and 24 December 2008 obtained from Kajang City Council for Lot 41514 and Lot 41503, addressed to Spatial Design;
- (e) an invoice from Leecon Perunding to Spatial Design for mechanical and electrical consulting services for Lot 41514;
- I** (f) approval letter from the Fire and Rescue Department to Spatial Design that its plan had been received and approved subject to compliance;
- (g) an invoice for RM250,000 by Jasamurni Konsult for structural design, drawings and submission for Lots 41514 and 41503;

- (h) an invoice for mechanical and electrical consulting services provided by Leecon Perunding for Lot 41514 and Lot 41503; A
- (i) an invoice for professional services provided by Perunding CSS for Lot 41514 and Lot 41503; and
- (j) schematic drawings done by Spatial Design, the architect. B

[29] It is pertinent to note that at the hearing of the assessment of damages before the learned registrar, the evidence was entirely by way of affidavit evidence. There was no cross-examination on the affidavits filed by the parties. However the defendant had put the plaintiff to proof of all the documents set out above, stating that it required formal proof. Notwithstanding this, no witnesses were called. C

[30] The net result is that all of the aforesaid documents remain in dispute in relation to the veracity or truth of the contents. As stated in *Lee Sau Kong v Leow Cheng Chiang* [1961] 1 MLJ 17 by Thomson CJ, quoting Lord Goddard in *Bonham-Carter v Hyde Park Hotel Ltd* [1948] WN 89: D

Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough for them to write down the particulars, and so to speak throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages.' They have to prove it. E

[31] In the instant case the plaintiff seeks to maintain that it has proven the loss suffered by the production of the foregoing documents. However as the defendant put the plaintiff to formal proof thereof, requiring the makers to be present, it follows that the invoices cannot amount to the truth of the quantum stated therein. It is necessary for the relevant consortium members to have been called to explain and provide justification for the invoices they issued. In other words, for example, the architect, or a representative of the architect ought to have been present to explain to the court in some depth the drawings he had undertaken and the time spent on the same, as well as the cost of his time whereupon the court would have a basis on which to estimate the work done. The defendant would also have been accorded an opportunity to cross-examine the architect to ascertain the veracity of his evidence and thereby the work actually done. This did not transpire. As matters stand therefore, there is no basis on which to assess or ascertain the value to be accorded to the invoices or schematic drawings. F
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[32] Certainly in so far as the various invoices issued by the various consortium members is concerned, this court is not in a position to ascertain the truth of the matters therein in the absence of oral evidence explaining those invoices. They amount to a little more than particulars of damages. I

- A [33] With regards to the schematic drawings they have been produced in evidence. Unfortunately there is no basis on which this court can determine the value of the same. The net result is that there is no evidence before this court which enables it to arrive at an assessment of the value of the work done. This, to my mind, would have been best achieved by calling the various actors who
- B had participated in and performed the work, as claimed by the plaintiff.

- C [34] Even if the parties had not proceeded on a quantum meruit basis, but had sought instead to assess damages on the basis of the plaintiff's loss, it would still not have been open to the plaintiff to simply rely on the formula in the letter of engagement. It would still have been incumbent upon the plaintiff to prove the damages in full. The formula is akin to a liquidated damages clause and as such under s 74 of the Contracts Act 1950, it would still have been incumbent upon the plaintiff to prove its loss in full.

- D [35] In these circumstances, it appears to this court that the plaintiff has failed to prove the damages it has suffered, or the restitution it is entitled to for work done on a quantum meruit basis.

E OTHER FACTORS

- F [36] There are a few other matters that detract from an award as suggested by the plaintiff. A perusal of the various invoices and schematic drawings discloses that all invoices are addressed to the architect, namely Spatial Design, and not the plaintiff. Similarly it is not in doubt that the schematic drawings were all done by Spatial Design and Jasamurni Konsult. However the claim here is made by an entirely separate entity, namely the plaintiff. There is nothing to link the work done with the plaintiff, save for the single clause in the letters of engagement that specify that all payments are to be made to the plaintiff.
- G However there are no invoices from Spatial Design to the plaintiff seeking it to invoice the defendant for work done. Neither is there anything from Spatial Design to the plaintiff in respect of the eight invoices produced here in evidence which comprise the basis for the plaintiff's claim. The court is expected to ignore the fact that Spatial Design and the plaintiff are separate
- H entities, and to assume that all payments to the plaintiff will be (presumably) distributed to Spatial Design and the other consortium members. Spatial Design is not before the court.

- I [37] Similarly other anomalies include the fact that the application for planning permission was made by one Inai Tropika Sdn Bhd and not the defendant. Although they are related companies, the reason for the application being made in Inai Tropika's name and the invoice being issued to the defendant under the letters of engagement was not clarified fully. It is also a fact that while the plaintiff did not exist before 8 April 2008, it has billed for

services carried out prior to that date. This is probably due to the fact that the schematic drawings were carried out by the architect, but again this has not been fully clarified.

THE CONCLUSION

[38] Ultimately the plaintiff has failed on a balance of probabilities to establish that it is entitled to restitution on a quantum meruit basis in the sum of RM1,521,484. As such this court has no option but to award the defendant nominal damages in the sum of RM2,500. No order is made as to costs.

Order accordingly.

Reported by Kanesh Sundrum

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